APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SOUTHERN DIVISION

CIVIL ACTION No. 3828

BLACK BALL FREIGHT SERVICE; CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE; D-C INTERNATIONAL, INC.; GARRETT FREIGHTLINES, INC.; NAVAJO FREIGHTLINES, INC.; PACIFIC INTERMOUNTAIN EXPRESS CO.; WESTERN GILLETTE, INC.; RISS & COMPANY, INC.; IML FREIGHT, INC.; and AMERICAN TRUCKING ASSOCIATIONS, INC., *Plaintiffs,*

YELLOW FREIGHT SERVICE; T.I.M.E. FREIGHT, INC.; TRANSCON LINES, INC.; CONSOLIDATED COPPERSTATE LINES; TRI-STATE MOTOR TRANSIT CO.; UNITED TRANSPORTS, INC.; BRASWELL MOTOR LINES, INC.; CENTRAL FREIGHT LINES, INC.; CENTRAL EXPRESS, INC.; RED ARROW FREIGHT LINES; BROWN EXPRESS, INC.; ALAMO EXPRESS, INC.; J. H. ROSE TRUCK LINE, INC.; J. J. WILLIS TRUCKING CO.; J. V. HARRISON TRUCK LINES, INC.; MILLER TRUCK LINE, INC.; H. S. ANDERSON TRUCKING CO.; CENTRAL FORWARDING, INC.; ROBERTSON TANK LINES, INC.; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY; CHICAGO AND NORTH WESTERN RAILWAY COMPANY; CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY; CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY; THE COLORADO AND SOUTHERN RAILWAY COMPANY; THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY; ELGIN, JOLIET AND EASTERN RAILWAY COMPANY; FORT DODGE, DES MOINES AND SOUTHERN RAILWAY COMPANY; FORT WORTH AND DENVER RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; GREEN BAY AND WESTERN RAILROAD COMPANY; GULF MOBILE AND OHIO

RAILROAD COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; ILLINOIS TERMINAL RAILROAD COMPANY; THE KANSAS CITY SOUTHERN RAILWAY COMPANY; MISSOURI-KANSAS-TEXAS RAILROAD; MISSOURI PACIFIC RAILROAD COMPANY; NORFOLK AND WESTERN RAILWAY COMPANY; NORTHERN PACIFIC RAILWAY; ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; THE TEXAS AND PACIFIC RAILWAY COMPANY; TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY; AND UNION PACIFIC RAILROAD AND WATERLOO RAILROAD,

Intervening Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants,*

AMERICAN FARM LINES, *Intervening Defendant.*

Opinion, Findings of Fact, Conclusions of Law

Before: JERTBERG, Circuit Judge, and BOLDT and GOODWIN, District Judges

BOLDT, District Judge:

American Farm Lines (AFL) made an application under the provisions of Section 210a(a) Interstate Commerce Act, 49 U.S.C.A. Section 310a(a)[1] and Ex Parte No. MC-67,

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[1] Interstate Commerce Act, Section 210a(a), as amended, 49 U.S.C. 310a(a), provides:

"To enable the provision of service for which there is an *immediate and urgent need* to a point or points within a territory having *no carrier service capable of meeting such need*, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier by motor vehicle, as the case may be. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify, but for not more than an aggregate of one hundred eighty days, and shall create no presumption that corresponding permanent authority will be granted thereafter." (Emphasis added.)

Motor Carrier Temporary Authorities, 98 M.C.C. 483, 49 C.F.R. 1131, et seq., to the Interstate Commerce Commission (ICC) for a Temporary Authority to provide single-line motor carrier service. The application appeared in the Federal Register June 8, 1968. The thirty-five motor carrier plaintiffs in this action, twenty-eight intervening rail carrier plaintiffs and many other carriers, protested the application. The Temporary Authorities Board of the Commission (TAB) by order dated July 12, 1968, denied the application. AFL filed a petition for reconsideration, appealing the decision of TAB. Division 1 of ICC, acting as an Appellate Division, by order dated September 3, 1968, vacated the order of denial issued by TAB and granted the application.

Some of the plaintiffs and other carriers filed petitions for reconsideration, which were not authorized by the applicable rule, Ex Parte No. MC-67, *Motor Carrier Temporary Authorities,* 98 M.C.C. 483 at page 496, (49 C.F.R. 1131.6), since neither of the conditions authorizing such petitions was present:

> "(a) Petitions for reconsideration.—Pursuant to and in accordance with the Commission's General and Special Rules of Practice, petitions for reconsideration of orders of (1) the Temporary Authorities Board, and (2) Division 1 initially granting or denying temporary authority in proceedings not subject to prior determination by the Temporary Authorities Board, may be filed by any interested person."

Plaintiffs' complaint was filed in this court on September 26, 1968, together with a motion for an order to stay the going into effect of the ICC order of September 3, 1968.

This motion was argued October 2, 1968 before Judge Boldt per Title 28, Section 2284(3) and (5). After considering oral and written evidence and the argument of counsel, the Court entered an order staying the going into

effect of the ICC order of September 3, 1968, and declaring it to be otherwise inoperative pending determination in this Court of the issues presented in this proceeding, or until further order of this Court. At that hearing, counsel for ICC did not challenge the administrative finality of the ICC order of September 3, 1968. By its order of October 9, 1968, ICC recognized the stay order of this Court.[2]

On October 16, 1968, the Department of Defense filed with ICC a reply to the petitions for reconsideration, and on October 17, 1968, AFL filed a combined reply to the petitions for reconsideration and a petition to reopen. Many plaintiffs filed motions to strike these pleadings on the ground they were not authorized by ICC Rule 49 C.F.R. 1131.6, nor by any other rule.

On November 12, 1968, ICC filed in this court a "Motion to Stay Further Proceedings Herein," stating therein that

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[2] "Upon consideration of the record in the above entitled proceedings, and the entry of a temporary restraining order on October 3, 1968, by the United States District Court for the Western District of Washington in Civil Action No. 3828, *Black Ball Freight Service, et al* v. *United States*, wherein the Court stated in part:

> 'IT IS ADJUDGED AND ORDERED that that certain order of the Interstate Commerce Commission issued by it in its Docket MC-129908TA application of American Farm Lines, Oklahoma City, Oklahoma under date of September 3, 1968, be stayed from going into effect or otherwise be inoperative pending a determination by this Court of the issues of this proceeding, or until the further order of this Court.'

and good cause appearing therefor:

It is ordered, that the effective date and operation of the order heretofore entered September 3, 1968, in No. MC-129908TA be, and it is hereby, postponed until further order of the Commission.

It is further ordered, that in view of the Court's order and of the order of the Commission, American Farm Lines may not now perform any for-hire operations in interstate or foreign commerce pursuant to the Commission's order of September 3, 1968, entered in this proceeding.

on November 5, 1968, on its own motion, ICC had reopened the proceeding before it and requested a stay of further action in the case before this court. By their prompt opposition to this motion, plaintiffs contended that ICC was not authorized to reopen its proceeding because this court had taken jurisdiction of the matter. Also, plaintiffs asserted that even if the court had not taken jurisdiction, the ICC Rules precluded reopening of the proceeding. No action has ever been taken to note the ICC motion for hearing or to otherwise procure the stay sought by the motion.

The same contentions were presented to ICC is plaintiff's motion for vacation of the reopening order.

Since the ICC order of November 5, 1968 recited that a verified statement from the Department of Defense would be received, and no ruling having been made on their petitions to vacate the order of November 5, plaintiffs responded to the Caputo verified statement submitted by the Department of Defense. These responses asserted plaintiffs had satisfactorily performed all services previously requested of them and their willingness and ability to perform any service requested of them by any shipper, including the Department of Defense.

On December 19, 1968, ICC issued a new order in the same docket granting AFL the same temporary authority previously granted by the ICC order of September 3, 1968 as to which the stay order of this court was and still is in full effect.

On December 31, 1968, pursuant to Fed. Civ. R. 15(d), plaintiffs filed in this court a "Supplemental Complaint Setting Forth Transactions or Occurrences or Events Which Have Happened Since the Date the Original Complaint was Filed Herein" and a motion to stay the going into effect of the ICC order of December 19, 1968.

Following extended argument, on January 6, 1969, Judge Boldt entered an order restraining the going into effect of the ICC order of December 1968 and ordering it to be inoperative until further order of this court. Full hearing on the merits was heard by the Three-Judge Court on January 24, 1969.

The issuance of the ICC order of September 3, 1968 was based on a supporting letter written by the Department of Defense, dated May 15, 1968. The ICC also had before it a letter dated April 30, 1968 written to the president of AFL wherein the Department of Defense stated it was not in a position to verify that there would be insufficient or inadequate service to meet Department requirements in the absence of the single-line service AFL seeks to provide.

"As authorized by the ICC Act, after extended consideration the ICC adopted Testimony Authority Rules, effective July 5, 1965, specifying procedures for the submission and determination of temporary authority applications under Section 210(a) ICC Act. Ex Parte No. MC-67, 49 C.F.R. 1131. . . . The rules specifically provide in mandatory terms that each filed temporary authority application must be accompanied by one or more supporting statements and each such statement must contain at least the information specified in eleven categories," *Acme Cartage Co., et al. v. United States, et al.*, 290 F.Supp. 453 at page 454. Among those categories are:

"(8) Whether efforts have been made to obtain the service from existing motor, rail, or water carriers, and the dates and results of such efforts.

"(9) Names and addresses of existing carriers who have either failed or refused to provide the service, and the reasons given for any such failure or refusal."

The ICC Rules, 49 C.F.R. 1131 et seq., provide for the filing and processing of written temporary authority applications and establish standards and mandatory pro-

cedures applicable to all phases of the submission and determination of such applications. Except for supporting statements by the Department of Defense, the rules require "certified" evidentiary statements by the supporting shippers claiming to need the new service, and further require factual statements in a minimum of eleven specific categories. The rules require notice of the proceeding to be given by publication in the Federal Register and authorize protest of the application by "persons who can and will provide all or any part of the proposed service". Each protest must specify the service the protestant can and will offer and must be served upon the applicant. Submission of supplemental data after the applications are filed is not permitted. The ICC rules establish specific evidentiary standards for determination of each application for temporary authority and provide that grants "shall be only made" where the evidence "establishes" an immediate and urgent need in accordance with the prescribed standards.

Rule 49 C.F.R. 1131.4(b)(4) pertaining to single-line service provides:

> "Generally, the desire of a shipper for single-line service in lieu of existing interchange or connecting-carrier service will not warrant a grant of temporary authority. A grant of temporary authority to effectuate single-line service will be authorized only when it is clearly established that the carriers providing multiple-line service are not capable of, or have failed in, meeting the reasonable immediate and urgent needs of shippers or receivers between the points or territories and in respect of the commodity or commodities involved."

Plaintiffs assert the initial supporting letter accompanying AFL's temporary application did not provide the information required by 49 C.F.R. 1131.2(c), particularly (8) and (9) thereof, and that granting of the temporary authority in question without a showing of the required

information in effect denied them consideration of their protests. Plaintiffs contend no specific failure of service by plaintiffs has been asserted to which specific response could be made and that their response to generalities could only be met by their general assertions.

In their answer, defendants admit:

> "With respect to the allegations contained in the initial compliant, admit that the order of the Commission dated September 3, 1968 may not have been based upon evidence to support its conclusion."

In their brief, the defendants admit:

> "* * * That the Commission's order of September 3, 1968 (1) may not have been based upon evidence to support its conclusions."

These concessions indicate the ICC itself had strong misgivings concerning its compliance with the rules ICC itself had promulgated.

Defendants contend the ICC order dated September 3, 1968 became moot when ICC reopened the proceeding on November 5, 1968. This contention is without merit. Prior to reopening of the proceeding which resulted in the ICC order of September 3, 1968, judicial review of that order had been perfected pursuant to 28 U.S.C. 1336. Jurisdiction thereof vested in and had been exercised by this court in an extended evidentiary hearing wherein ICC actively participated. Following such hearing the stay order of this court was entered. In these circumstances, without prior leave of court, ICC was without authority to take any action which directly or indirectly might nullify or impair the jurisdiction of this court over the ICC order under review.

Defendants further contend that the ICC order of September 3, 1968 was not administratively final. However, at the oral argument on the merits defendants conceded

that plaintiffs were properly in court seeking review of that order.

Plaintiffs assert that the September ICC order was administratively final under the Temporary Authority Rules, 49 C.F.R. 1131.6, and that if those rules do not govern, the general ICC rule, 49 C.F.R. 1100.101(a)(2), is applicable:

> "All decisions, orders or requirements of a division of the Commission in any proceeding shall be considered administratively final, except those involving issues of general transportation importance, those wherein the division reverses, changes or modifies a prior decision by a *hearing officer*, and those wherein the initial decision is made by a division." (Emphasis added.)

Indisputably this proceeding did not involve action by a hearing officer, but rather a reversal by ICC Division 1 of a prior determination by its Temporary Authority Board.[3]

Title 28 U.S.C. Section 1336 provides:

> "*Interstate Commerce Commission's orders.* (a) Except as otherwise provided by Act of Congress, the district courts shall have jurisdiction of any civil action to enforce, enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission."

The Supreme Court stated in *Pennsylvania Railroad Company* v. *United States*, 363 U.S. 202 (1960):

> "We decided some years ago that while a mere 'abstract declaration' on some issue by the Commission may not be judicially reviewable, an order that determines a 'right or obligation' so that 'legal consequences' will flow from it is reviewable. Rochester

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[3] The disposition of an application by a Board does not constitute a hearing before a hearing officer. Compare Trans-American Freight Lines, Inc. v. U.S., 258 F. Supp. 910 (1966).

Tel. Corp. v. United States, 307 U.S. 125, 131, 132, 143, 83 L ed 1147, 1152, 1153, 1159, 59 S.Ct. 754."

And further:

"We have held that judicial review is equally available whether a Commission order relates to past or future rates, or whether its proceeding follows referral by a court or originates with the Commission. El Dorado Oil Works v. United States, 328 U.S. 12, 90 L ed 1053, 66 S.Ct. 843."

In Inland Steel v. U.S., 306 U.S. 153 (1939), the Court stated:

"*Third.* The appellant takes the position that the Commission's purported postponement of its command to cease and desist (eighteen months after the interlocutory injunction was granted) deprived the court of authority to enforce the conditions of its interlocutory injunction. However, since the court had exercised jurisdiction to review and suspend the Commission's report and order, the administrative body was without power to act inconsistently with the Court's jurisdiction, had it attempted to do so. . ."

Defendants do not dispute the fact that the ICC order of September 3, 1968 was a final grant of temporary authority to AFL to engage in operations thereunder, subject only to compliance with tariff requirements, and that the order was at that time reviewable by a three-judge court. Defendants have cited several cases [4] in support of

[4] Aberdeen & Rockfish RR v. United States, 270 F. Supp. 695 (E.D. La. 1967), Affirmed as Modified 393 U.S. 87 (1968); Alamo Express, Inc. v. United States, 239 F. Supp. 694 (W.D. Tex. 1965), Affirmed 382 U.S. 19 (1965); Donaldson v. Read Magazine, 333 U.S. 178 (1948); United States v. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, 294 U.S. 499 (1935); Anchor Line Limited v. Federal Maritime Commission, 299 F. 2d 124 (Ct. of Appeals, D.C. 1962); Atchison, Topeka and Santa Fe Railroad Company v. United States, 231 F. Supp. 422 (N.D. Ill. E.D. 1964).

their argument that the ICC retains "continuing jurisdiction over its orders at all times." However, none of the cases deals with the question now presented, i.e. whether, after a court has review jurisdiction of an ICC order and a stay of that order has been entered by the court, the ICC may nullify the review and the stay order by reopening the ICC proceedings. The ICC itself has answered this question in Central Freight Lines, Inc. v. Strickland Transportation Lines, Inc., 102 M.C.C. 291.

> ". . . Moreover, when the Court has exercised jurisdiction to review and suspend a report and order of the Commission, we are without power to act inconsistently. . ."

Even if ICC had jurisdiction to reopen the ICC proceeding and to consider the Caputo verified statement, it would not meet the requirements of categories (8) and (9) of ICC Rule 49 C.F.R. 1131.2(c).

The Caputo verified statement fails to show any efforts by the Department of Defense to obtain from existing carriers the service AFL seeks to provide, or the identity of any existing carriers who failed or refused to provide the needed service and the reasons given for any such failure or refusal. Statement of these matters is mandatorily required by categories (8) and (9).

At best, the Caputo verified statement merely states the Department of Defense preference for the continuance of AFL's service and the expansion of that service into single-line service. AFL has been performing service for the Department of Defense under the provisions of 49 U.S.C. 303(b)(5), but no issue pertaining to that service is now before this court. The fact that the Department of Defense may desire a new or expanded type of service by a particular carrier does not justify the granting of temporary authority to provide such service without full compliance with all mandatory ICC rules.

While under 49 U.S.C. 310a(a) the ICC is vested with wide discretion to grant temporary authority for motor carrier services, it may only do so when both conditions specified in the statute are shown to exist, i.e. (1) "an immediate and urgent need" for service, (2) "within a territory having no carrier service capable of meeting such need." It is clear from the language of the statute that in the absence of either one or both of the conditions specified, ICC "has neither power nor discretion to grant temporary authority applications . . . Variable and unpredictable enforcement of important and mandatorily stated rule provisions is inequitable in principle and unsound in practice." Acme Cartage Co. v. U.S., supra, at 456-457.

The court's Findings of Fact and Conclusions of Law are hereby found and held as stated in the foregoing Opinion.

For the reasons stated, we find that the granting of each Temporary Authority referred to in the foregoing Opinion was arbitrary, capricious and erroneous in law. Accordingly, each of the Temporary Authorities should be and hereby is held null and void. The stay order as to each Temporary Authority is continued in effect until further order of this court.

DATED this 26th day of March, 1969.

GILBERT H. JERTBERG
Gilbert H. Jertberg
United States Court of Appeals Judge

GEORGE H. BOLDT
George H. Boldt
United States District Court Judge

WILLIAM N. GOODWIN
William N. Goodwin
United States District Court Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SOUTHERN DIVISION

CIVIL ACTION No. 3828

Judgment

BLACK BALL FREIGHT SERVICE; CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE; D-C INTERNATIONAL, INC.; GARRETT FREIGHTLINES, INC.; NAVAJO FREIGHTLINES, INC.; PACIFIC INTERMOUNTAIN EXPRESS CO.; WESTERN GILLETTE, INC.; RISS & COMPANY, INC.; IML FREIGHT, INC.; and AMERICAN TRUCKING ASSOCIATIONS, INC., *Plaintiffs,*

YELLOW FREIGHT SERVICE; T.I.M.E. FREIGHT, INC.; TRANSCON LINES, INC.; CONSOLIDATED COPPERSTATE LINES; TRI-STATE MOTOR TRANSIT CO.; UNITED TRANSPORTS, INC.; BRASWELL MOTOR LINES, INC.; CENTRAL FREIGHT LINES, INC.; CENTRAL EXPRESS, INC.; RED ARROW FREIGHT LINES; BROWN EXPRESS, INC.; ALAMO EXPRESS, INC.; J. H. ROSE TRUCK LINE, INC.; J. J. WILLIS TRUCKING CO.; J. V. HARRISON TRUCK LINES, INC.; MILLER TRUCK LINE, INC.; H. S. ANDERSON TRUCKING CO.; CENTRAL FORWARDING, INC.; ROBERTSON TANK LINES, INC.; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY; CHICAGO AND NORTH WESTERN RAILWAY COMPANY; CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY; CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY; THE COLORADO AND SOUTHERN RAILWAY COMPANY; THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY; ELGIN, JOLIET AND EASTERN RAILWAY COM-

PANY; FORT DODGE, DES MOINES AND SOUTHERN RAILWAY COMPANY; FORT WORTH AND DENVER RAILWAY COMPANY; GREAT NORTHERN RAILWAY COMPANY; GREEN BAY AND WESTERN RAILROAD COMPANY; GULF MOBILE AND OHIO RAILROAD COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; ILLINOIS TERMINAL RAILROAD COMPANY; THE KANSAS CITY SOUTHERN RAILWAY COMPANY; MISSOURI-KANSAS-TEXAS RAILROAD; MISSOURI PACIFIC RAILROAD COMPANY; NORFOLK AND WESTERN RAILWAY COMPANY; NORTHERN PACIFIC RAILWAY; ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; THE TEXAS AND PACIFIC RAILWAY COMPANY; TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY; AND UNION PACIFIC RAILROAD AND WATERLOO RAILROAD,

Intervening Plaintiffs,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants,*

AMERICAN FARM LINES, *Intervening Defendant.*

This cause came on for trial on the merits before the undersigned judges as a three-judge court on January 24, 1969 and after the argument of counsel was submitted for decision. The court now having made and entered herein its Opinion, Findings of Fact and Conclusions of Law in writing, and being fully advised in the premises, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that each of the Temporary Authorities issued by the Interstate Commerce Commission to intervening defendant American Farm Lines on September 3, 1968 and December 19, 1968, respectively, be and the same hereby is held and adjudged null and void.

The stay order as to each of said Temporary Authorities is continued in effect until further order of this court.

DATED this 26th day of March, 1969.

GILBERT H. JERTBERG
Gilbert H. Jertberg
United States Court of Appeals Judge

GEORGE H. BOLDT
George H. Boldt
United States District Court Judge

WILLIAM N. GOODWIN
William N. Goodwin
United States District Court Judge

APPENDIX C

Order

SERVICE DATE
SEPTEMBER 5, 1968

TA-GR-1-1

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, acting as an Appellate Division, held at its office in Washington, D. C., on the 3rd day of September, A. D. 1968.

No. MC 129908 TA

AMERICAN FARM LINES
OKLAHOMA CITY, OKLAHOMA

The above-entitled application under Section 210a(a) of the Interstate Commerce Act, and applicant's petition for reconsideration of the order of the Commission, Temporary Authorities Board, entered herein on July 12, 1968, and reply or replies thereto being under consideration and good cause therefor appearing:

It is ordered, That said order of the Commission, Temporary Authorities Board be, and it is hereby, vacated and set aside .

And it appearing, That there is an immediate and urgent need for the motor carrier service described in the appendix hereto, and that there is no carrier service available capable of meeting such need;

It is further ordered, That applicant be, and is hereby, granted temporary authority, conditioned upon full compliance with all applicable statutory and Commission requirements concerning tariff publications, evidence of security for the protection of the public, and designation of agents upon whom process may be served, to engage in the business of transportation by motor vehicle, in interstate or foreign commerce, to the extent and in the manner set forth in the appendix hereto, subject to the further conditions that unless otherwise provided in the appendix, (1) the service herein authorized shall be limited to the movement of traffic which originates at and is destined to the points and areas specified in the appendix, and (2) no operating right separately described in the appendix may be combined with any other operating right therein described or with any other temporary or permanent authority now held by, or hereafter issued to, applicant or any other carrier.

It is further ordered, That the service authorized by this order shall not be commenced unless and until all the above-specified requirements have been met and applicant has received notice from the Commission that compliance has been effected and service may be instituted.

It is further ordered, That upon the authority herein granted becoming effective, failure of applicant to render reasonably continuous and adequate service to the public pursuant thereto and to maintain compliance with statutory and Commission requirements shall constitute sufficient

grounds for suspension, change, or revocation of the said authority.

It is further ordered, That if applicant fails to comply with all applicable statutory and Commission requirements, rules and regulations within 30 days from the date hereof, or such additional time as the Commission may specifically grant, this order shall be of no further force and effect and the said application shall be deemed to be denied for want of prosecution and applicant so notified.

And it is further ordered, That, except as herein granted, the said application be, and it is hereby, denied.

By the Commission, Division 1, acting as an appellate division.

H. NEIL GARSON,
Secretary.

(SEAL)

TA-GR-1

APPENDIX

No. MC 129908 TA

AMERICAN FARM LINES
OKLAHOMA CITY, OKLAHOMA

By the order of which this appendix is a part, entered under the name and number shown above, applicant upon compliance with the conditions set forth therein and after receipt of notice from the Commission that the said conditions have been met, and provided the operations are begun within the time allowed in said order or any extension thereof, is authorized to engage in the business of transportation by motor vehicle, in interstate or foreign commerce as follows:

Time for which authority is granted—90 days

Type of carrier—Common

Service authorized—

General commodities, including Classes A and B explosives, moving on Government bill of lading, over irregular routes,

Between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada, Utah and Arizona.

SAFETY CONDITION: This grant of authority is conditioned upon applicant's maintenance of a satisfactory degree of compliance with the Federal Highway Administration's (Department of Transportation) Motor Carrier Safety Regulations. In the event of non-compliance with these regulations, that Administration may submit a recommendation for revocation of the authority.

APPENDIX D

BEFORE THE
INTERSTATE COMMERCE COMMISSION

MC-129908 TA

IN THE MATTER OF:
AMERICAN FARM LINES—TEMPORARY
AUTHORITY APPLICATION

Verified Statement of Vincent F. Caputo

My name is Vincent F. Caputo. I am employed by the Department of Defense (DOD) as the Director for Transportation and Warehousing Policy. The duties of my position are such that I am charged with the responsibility for, among other things, the efficient and economical operation of physical distribution activities of the DOD.

This Commission has previously been advised by DOD that it has a substantial and continuing need for the serv-

ices of American Farm Lines in the transportation of general commodities, including Class A and B explosives, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and, on the other, points in Washington, Arizona, California, Nevada and Utah.

The Commission, by order served 5 November 1968, reopened this proceeding "for the purpose of receiving a verified statement from the Department of Defense which shall, to the extent the national defense and security will permit disclosure, specify the commodities and points between which there is an immediate and urgent need for applicant's proposed service which cannot be met by existing carriers." This statement is submitted in response to that order.

In discharging its responsibility for conduct of the nation's defense, the DOD must effect movement of a vast quantity of a multitude of different commodities between innumerable points and places within the United States and abroad. A substantial percentage of its total transportation requirement is for movement of diverse types of traffic between points in the states of Kentucky, Indiana, Illinois, Missouri, Louisiana, Arkansas, Texas, Kansas and Oklahoma, on the one hand, and, on the other, points in Washington, California, Arizona, Nevada and Utah. For example, in the 11 month period between 1 August 1967, and 30 June 1968, the DOD required transportation service for the movement of the following amounts of "general commodities (including Class A and B explosives)" to points in Washington, California, Arizona, Nevada and Utah:

1. 38,892,000 pounds from points in Kentucky;
2. 480,656,000 pounds from points in Indiana;
3. 173,538,000 pounds from points in Illinois;
4. 91,364,000 pounds from points in Missouri;

5. 189,312,000 pounds from points in Louisiana;

6. 18,858,000 pounds from points in Arkansas;

7. 252,844,000 pounds from points in Texas;

8. 21,482,000 pounds from points in Kansas; and

9. 190,118,000 pounds from points in Oklahoma.

Typical origins from which traffic moved in the indicated period include governmental and commercial installations located at or near such points as: St. Louis, Lake City, Sweetsprings, Herman, Glasgow, Harrisonville, Springfield and Joplin, Missouri; McAlester, El Reno, Lawton, Oklahoma City, Miami, Southard and Tulsa, Oklahoma; Rogers, Pine Bluff, Camden and Magnolia, Arkansas; Avon, Richmond and Louisville, Kentucky; Crane, and Indianapolis, Indiana; Alton, East Alton, Granite City and Marion, Illinois; Texarkana, Amarillo, Fort Worth, Dallas, Garland, Carrolton, Longview and Karnack (Marshall), Texas; Atchison, Parsons, Wichita and Junction City, Kansas; and Doyline, Louisiana. Typical destinations to which this traffic moved include installations at or near the following points: Port Chicago, Fallbrook, San Diego, Victorville, Twenty Nine Palms, Seal Beach, Fairfield, Merced, China Lake, Vallejo, Sacramento, Industrial City, Oakland, Herlong, Concord, Arlington, Chico, Lathrop and Susanville, California; Bellemont and Yuma, Arizona; Ogden, Salt Lake City and Warner, Utah; Fallon and Hawthorn, Nevada; and Bangor, Tacoma and Bremerton, Washington.

In the same period, DOD required service for movement of 499,968,000 pounds of "general commodities (including Class A and B explosives)" in the reverse direction. Of that total, 17,914,000 pounds moved from points in Arizona; 385,906,000 pounds from points in California; 19,528,000 pounds from points in Nevada; 54,342,000 pounds from points in Utah; and 22,278,000 pounds from points in

Washington. Typical origins are: Los Angeles, Concord, Sacramento, Oakland, Lathrop, Richmond, Twenty-Nine Palms, Fairfield, El Segundo, San Bernardino, La Mirada, Vallejo, San Jose, Santa Clara, Vernon, El Monte, Herlong, Lompac, Fallbrook, Culver City, Seal Beach, Burbank, Long Beach, National City, Marysville, Oceanside, Victorville, Lyoan, Palmdale and Stockton, California; Hawthorn and Nellis Air Force Base, Nevada; Yuma, Litchfield Park, Flagstaff, Phoenix, Goodyear, Tucson and Glendale, Arizona; Bangor, Tacoma and Bremerton, Washington; and Ogden, Tooele and Dugway, Utah. These movements were destined to numerous points distributed throughout the involved midwestern, southern and southwestern states. Indicative of this is the fact that these destinations include virtually all of the points at which "westbound" traffic is originated and also includes some points at which traffic moving in the reverse direction is not originated.

As shown in the period between 1 August 1967, and 30 June 1968, the DOD required service for the movement of a total of more than 1,900,000,000 pounds of freight between the territories, American Farm Lines seeks to serve. That traffic consisted of thousands of different articles and commodities. Representative items are: numerous items falling within the definition of Class A and Class B explosives; ammunition, ammunition links; nonexplosive practice bombs and mines; bomb bodies and bomb body parts; aerial bomb cluster adapters; bullets or bullet cores; canisters; salvaged cannon; new and used cartridge cases; coils: dummy charges, fuzes; dummy grenades; gun wads; solid or practice projectiles or rocket heads, projectile or rocket parts; empty projectile or rocket parts; electric, electronic or scientific instruments; iron or steel shot; bomb band shipping assemblies and shell shipping assemblies; shipping cans; bomb fin assemblies or rocket fin assemblies; howitzer cannons and mortars; gun barrels and/or gun mounts; machined iron and steel articles; plastic and plastic and metal combined; rocket chambers; bomb racks;

internal combustion, jet and steam engines and parts thereof; paper articles including forms, booklets and cards; small arms; hand or rifle grenades; smoke grenades; starting cartridges or fuzes; tents; paulens; life rafts; runway covers; boots; shoes; unclassified and unsegregated salvage; surplus equipment and supplies returned from overseas; military impediments; helium gas and returned empty chambers; and canned fruits, vegetables and dried fruit.

This tremendous volume of traffic that DOD must move between numerous and varying points in the involved territories is transported by rail or motor vehicle and, in extreme emergency situations, by aircraft. A part of this traffic requires that it be transported from origin to destination in the most expeditious manner possible. However, the use of aircraft is prohibitively expensive for movement of volume shipments except in the most extreme emergencies. It follows, therefore, that the availabliity of motor carriers that provide service over the most direct routes and in a manner that restricts time in transit to a minimum is imperative. This defense need for speed has not been met in many, many instances by the current certificated motor carriers due to a number of factors, including the following:

1. The majority of all certificated motor carrier service now available to the DOD is provided upon a joint line basis. In fact, a substantial part of the certificated motor carrier service now available between major origins and destinations, in point of volume, requires participation by at least two carriers in addition to the originating carrier. Experience has shown that where joint line service is involved, we must in some cases allow no less than 24 hours for each 300 miles in order to arrive at a "time in transit" that can be relied upon. In contrast, single line service operating over the most direct routes available, by use of "two-man driving teams" generally can be relied upon

to consistently provide delivery within a transit time computed by allowing 8 hours for each 300 "short line" miles involved.

2. Virtually all carriers currently holding authority to provide service between points in the territories involved here are "regular route" carriers. They must necessarily traverse prescribed routes which are often circuitous. Thus, even where such carriers are authorized to provide service upon a single line basis between particular origins and destinations, they are still required to operate over greater distances than would be necessary if they held "irregular route" authorizations; and

3. Some "regular route" carriers utilize "single" drivers rather than "two-man driving teams". These "single" drivers operate the vehicle between established "relay" points. Further, I understand that some of these carriers do not "qualify" or license their power units in all states through which they operate. As a result, even in those instances where they hold authority for provision of single line service, it is routine for these "regular route" carriers to use a number of different power units and drivers in effecting delivery of a single shipment moving between points in the territories involved here. This situation sometimes results in delays due to such things as temporary unavailability of power equipment at relay points, unavailability of a driver for immediate movement beyond the relay points, and the myriad of other inevitable snags that seem to occur when it is necessary for shipments to be processed through a number of different terminals.

As I pointed out before, service offered by currently authorized motor carriers for the movement of DOD traffic between points in the involved territories is not generally available upon a single line irregular route basis. This has created a situation where "time in transit" required for the movement of given shipments are in excess of those dictated by the short line distances between origins and

destinations. The extent to which "times in transit" experienced in use of currently certificated carriers exceed those which would be experienced if service were performed by irregular route carriers on a single line basis by use of "two-man driving teams" is clearly disclosed by the following examples:

1. Some shipments of Class A and Class B explosives moving from McAlester, Oklahoma, to Bangor, Washington, are in transit for periods varying from 6 to 11 days when use of "joint line" service is necessary. In contrast, the one carrier now holding a certificate authorizing it to provide single line service for movement of such shipments on an irregular route basis consistently effects "third morning" delivery at Bangor, Washington;

2. Shipments of empty shell cases from San Jose, California, to Doyline, Louisiana, consistently require transit times of 5 to 6 days when handled on a "joint line" basis. In contrast, delivery is made within 72 hours after dispatch of the shipment from San Jose, California, when service is provided on a single line basis by carriers using "two man driving teams"; and

3. The only known certificated carrier service now available for movement of the various types of commodities being shipped from St. Louis, Missouri, to points throughout California is that of "regular route" carriers. In some instances service is available from this type of carrier on a single line basis while in other instances the only service available is that offered on a "joint line" basis. However, even in those instances where service is available from "regular route" carriers on a single line basis, "transit times" that could be afforded by carriers holding "single line" authority for operation over irregular routes would be little more than half that now experienced through use of "regular route" carriers.

From a Defense point of view, any transportation system which is largely comprised of carriers holding "bits and pieces" of authority which preclude rendering of expeditious service is inherently inefficient. In addition, such a system is inefficient because it does not permit the provision of transportation service that is fully possible and practical under proven techniques. Yet, this is the precise situation that DOD has for years been forced to "live with" in its effort to efficiently and economically procure and distribute the vast quantities of various commodities, including Class A and Class B explosives, required for implementation of the nation's policies related to national defense. This is well illustrated by the fact that to my knowledge no carrier holds authority permitting it to provide service on a single-line basis for movement of all of the involved commodities between *all* points in any one of the nine midwestern, southern and southwestern states involved in this proceeding, on the one hand, and, on the other, all points in *any* of the five involved western states. In fact, DOD has been unable to find a single carrier that is authorized to provide such service from *any* origin in *any* of the midwestern, southern and southwestern states involved here to *all* points in the state of California. The same situation prevails with respect to authority of presently certificated carriers for movemen tof the involved commodities in the reverse direction. In addition, no carrier to my knowledge holds authority to provide single line service, whether over circuitous routes or otherwise, for movement of all of the involved commodities from many of our major origins to many of our major destinations. The extent to which this deplorable situation exists is clearly shown by the following examples:

1. There is no known carrier authorized to transport DOD traffic in single line service from the Naval Ammunition Depot at McAlester, Oklahoma, to Port Chicago, Fallbrook, Herlong, Camp Pendleton, Ft.

Ord, George Air Force Base, or Twenty-Nine Palms, California; Fallon or Hawthorn, Nevada; Tooele Air Force Base, Utah; or Ballemont, Arizona;

2. There is no known carrier authorized to transport DOD traffic in single line service from Rogers, Arkansas, to any point in California;

3. There is no known carrier authorized to provide single line service for movement of DOD traffic from either Pine Bluff or Camden, Arkansas, to any destination in California, Arizona, Nevada or Utah;

4. There is no known carrier authorized to provide single line service for movement of DOD traffic from Magnolia, Arkansas, to any point in California;

5. There is no known carrier authorized to provide single line service for movement of DOD traffic from the Blue Grass Ammunition Depot, Avon, Kentucky, or from Blue Grass Activity, Richmond, Kentucky, to points in California.

6. There is no known carrier authorized to transport Class A and Class B explosives on a single line basis from Lake City Ammunition Plant, Lake City, Missouri, to points in California.

7. There is no known carrier authorized to transport DOD traffic on a single line basis from Lone Star Ammunition Plant or from the Red River Arsenal, Defense, Texas, to points in Arizona, Nevada, Utah, California or Washington;

8. There is no known carrier authorized to provide single line service from Longhorn Army Ammunition Plant, Karnack, Texas, to points in the involved western states;

9. There is no known carrier authorized to provide single line service from the Kansas Army Ammunition Plant,

Parsons, Kansas, to points in the western states involved;

10. There is no known carrier authorized to provide single line service for movement of DOD traffic from the Sacramento Army Depot, Sacramento, California, to Ft. Sill, Oklahoma, or to Ft. Riley, Kansas; and

11. There is no known carrier authorized to provide single line service for movement of DOD traffic from Twenty-Nine Palms, California, to Defense, Texas; from Sharpe Army Depot, Lathrop, California, to Ft. Sill, Oklahoma, or to Ft. Leonard Wood, Missouri; from Yuma Proving Grounds, Yuma, Arizona, to Amarillo, Texas; from Travis Air Force Base, Fairfield, California, to Crane, Indiana; from La Mirada, California, to Crane, Indiana; from San Jose or Santa Clara, California, to Pine Bluff, Arkansas, or Shreveport, Louisiana; from Vernon, California, to Pine Bluff, Arkansas; from Sierra Army Depot, Herlong, California, to Ft. Riley, Kansas, or to Lone Star Army Ammunition Plant, Defense, Texas, or to Crane Naval Ammunition Depot, Crane, Indiana; from Fallbrook, California, to Naval Ammunition Depot, McAlester, Oklahoma; from Litchfield Park, Arizona, to Longhorn Army Ammunitoin Plant, Karnack, Texas; from Goodyear, Arizona, to Lexington, Kentucky; from Naval Ammunition Depot, Hawthorn, Nevada, to Naval Ammunition Depot, McAlester, Oklahoma; from Tracy Defense Depot, Lyoth, California, to Oklahoma City, Oklahoma, or to Ft. Leavenworth and Ft. Riley, Kansas; nor from Stockton, California, to Crane, Indiana.

DOD is charged with the total responsibility for the execution of all functions incidental or necessary to the defense of the country. It is also charged with the responsibility for conducting those functions in the most

efficient and economical manner possible. However, enforced reliance upon motor carrier service available from presently certificated carriers for movement of vast quantities of freight, comprised of "general commodities (including Class A and Class B explosives)", between points in territories involved here has effectively subverted efforts to establish the most economical and efficient distribution system possible. This is evident, as I previously pointed out, from the fact that unduly excessive "times in transit" are experienced in the movement of this traffic by use of the currently authorized carriers. I might also point out that this results in higher cost to the taxpayers.

The fact that there is a paucity of expedited service available from presently authorized carriers is, in and of itself, ample proof that the additional service which American Farm Lines seeks authority to provide is necessary *to assure that the Government's reasonable transportation requirements* are met. In addition, I feel that the quantity of freight which DOD must regularly move between the involved areas is so vast that the need for the grant of authority sought is beyond question.

In many instances it is necessary to closely coordinate the arrival of inbound shipments with production schedules of manufacturing installations. For example, production at the Louisiana Army Ammunition Depot, Doyline, Louisiana, and at the Pine Bluff Arsenal, Pine Bluff, Arkansas, is dependent upon coordinated arrival of inbound materials. This is true because neither of these installations warehouse some types of ammunition produced at those points and incoming shipments of such items as empty shell cases are fed into the production line directly from the delivery vehicle. Accordingly, it is imperative that such inbound shipments arrive at the time expected. In addition, production of the shell cases at San Jose, California, is such that it is impossible to gear shipments from that point to Doyline and Pine Bluff so as to "accommo-

date" them to the excessive and widely varying transit times which result from use of most presently available "joint-line" services of regular route carriers. Every possible "routing" has been used for movement of these shipments. However, only one of the currently certificated common carriers on occasion has proven able to provide the "timed" delivery necessary to efficient operation of production facilities located at such points as Dayline, Louisiana, and that carrier alone does not have the capacity to move the tremendous volume required. This situation exists even though those carriers were specifically made aware of the fact that the "timed" delivery requested was essential to the national defense effort. Under these circumstances, there is no doubt but that the continued existence of situations of the type just described clearly shows that the Government has a substantial requirement for provision of expedited service of a type which "regular route" carriers are not now providing.

A substantial segment of the involved traffic consists of movements to air bases and port installations for trans-shipment beyond the continental limits of the United States. When shipments are assigned to specified vessels or aircraft for trans-shipment, it is imperative that they arrive at destination on a planned basis before the scheduled ship loading or air lift date. Nevertheless, the DOD has experienced situations where shipments routed via currently certificated carriers fail to arrive at destination in time for the scheduled trans-shipment. This occurs even though shipments are loaded at interior origin points sufficiently in advance of the scheduled trans-shipment date to allow for the transit times normally required by the particular carriers involved. A concrete example of this type of difficulty experienced in use of presently authorized carriers lies in the fact that failure of certificated carriers to provide promised three-day transit time on shipments from St. Louis, Missouri, to San Francisco, California, has re-

sulted in shipments arriving at destination after ships which were scheduled to move the traffic overseas had departed. There can be no question whatever but that the existence of service failures of this type are themselves sufficient to require that additional motor carrier service be made available for movement of DOD traffic.

It is at times desirable to formulate truckload shipments which are composed in Part of Class A and Class B explosives and in part of various other types of commodities that are normally referred to as "freight all kinds". However, it is many times impossible to ship in this fashion because carriers that hold authority for transportation of "general commodities" often do not hold co-extensive authority for transportation of Class A and Class B explosives. The inherent inadequacy in service that can be offered by carriers whose authority is "hamstrung" in this fashion is obvious.

As has been demonstrated, the type of service which can be provided by currently certificated carriers often does not meet DOD's transportation requirements for movement of traffic that requires expedited movement and precisely timed delivery. However, until recently DOD had no practical choice but to rely entirely upon that service. That situation changed in the latter part of 1966 when a number of cooperative agricultural associations, including American Farm Lines, made themselves known to DOD and began soliciting its traffic for movement pursuant to the exemption from economic regulation provided by Section 203(b)(5) of the Interstate Commerce Act. In due course, DOD began using the service offered by American Farm Lines for movement of Class A and Class B explosives and for movement of "general commodities" between various points in Kentucky, Illinois, Indiana, Missouri, Arkansas, Louisiana, Texas, Kansas and Oklahoma, on the one hand, and, on the other, various points in California, Arizona, Nevada and Utah and other states. It was immediately

discovered that the service of American Farm Lines was superior to that available from presently certificated motor carriers because its service was invariably provided by use of "two-man driving teams" operating over the most direct routes possible from origin to destinations and which was available between any and all points in broad multi-state territories.

The completely flexible and highly expedited service offered by American Farm Lines was used with ever increasing frequency throughout 1967 and the first several weeks of 1968. This was due to the fact that American Farm Lines was an organization whose service was capable of meeting DOD's accelerating need for such regularly required transportation niceties as precisely "timed deliveries" and absolute minization of time in transit. Thus, American Farm Lines transported a total of 74,155,685 pounds in the period between December 1966 and 30 June 1968. In every instance the service provided was excellent and met DOD service requirements.

Service provided by American Farm Lines is used to complement rather than to replace service available from certificated motor carriers and collectively these services have proven adequate to meet the Government's transportation requirements. Accordingly, DOD now relies upon the availability of its expedited and flexible service as well as the more rigid service available from certificated carriers in the movement of DOD traffic. The use of service provided by American Farm Lines has proven most beneficial. Examples of this include:

1. On 30 August 1968, the DOD shipped 22 truckloads of small arms ammunition from Lake City, Missouri, to Port Chicago, California, for export. The defense requirement was for this shipment to move "intact" which is to say, departing on the same day and arriving on the same day. A further requirement was for

arrival on or before 30 September 1968. No regulated carrier serving that base could provide the equipment needed and effect delivery within the required time. This shipment was delivered on 2 September 1968, within the requirement, by American Farm Lines;

2. On 3 May 1968, the DOD shipped special test items from Camden, Arkansas, to U.S. Army Proving Ground, Dugway, Utah. The defense requirement was for arrival before 7:00 A.M., 6 May 1968. American Farm Lines delivered the shipment on 5 May 1968. The certificated carriers serving Camden to Dugway would have required three participating carriers, and based upon our experience, would not have complied with the desired date of delivery;

3. American Farm Lines was called to deliver a shipment of Chemical Agent O and riot control agent from Fort Estill, Kentucky, to Travis Air Force Base, California, for airlift beyond. The requirement was for pickup on 3 October 1967, for connection with airlift no later than 7 October 1967. It was delivered 6 October 1967. American Farm Lines provides the only direct line service to our knowledge and, based upon our experience, the requirement could not have been met by interline carriers;

4. On 5 March 1968, "freight of all kinds" was picked up by American Farm Lines from Pine Bluff Arsenal, Arkansas, and delivered to Hill Air Force Base, Utah. The defense requirement was for delivery on 7 March 1968. It was delivered on that date for a two-day transit time. American Farm Lines provides the only direct service between these points. Our experience shows that no interline routing through certificated carriers could have effected delivery within the required time; and

5. On 20 April 1967, "freight of all kinds" was shipped from Edwardsville, Illinois, to Naval Weapons Station,

Vallejo, California. The defense requirement was for delivery on Sunday, 23 April 1967, and was delivered on that date by American Farm Lines which provides the only direct line service between these points. Our experience shows that no interline carrier could have met the requirement.

Injunctions issued by the United States District Court for the Western District of Oklahoma now precludes American Farm Lines from rendering much of the completely flexible service previously provided. In addition, recently enacted legislation will limit even more drastically the ability of American Farm Lines to provide fully flexible service in the future.

In the opinion of the DOD, grant of the authority sought by American Farm Lines would not adversely affect existing carriers to any material extent. Conversely, grant of its application for temporary authority would merely permit American Farm Lines to provide, on a certificated basis, the same service that it provided upon an "exempt" basis prior to 21 February 1968, and would be most beneficial to DOD in the discharge of its responsibility for conduct of the national defense.

As I have tried to make clear, the DOD has a substantial and continuing need for the service proposed in this proceeding. To this end it has already advised the Commission of its support for comparable permanent authority. In addition, this Commission is urged to promptly grant the instant application for temporary authority in order that the DOD can continue to receive the service that it was receiving prior to the injunction issued against American Farm Lines.

VERIFICATION

County of ..... }
State of ..... } ss:

Vincent F. Caputo, being duly sworn, deposes and says that he has read the foregoing statement and knows the content thereof; and that the same are true as stated.

.....
Vincent F. Caputo

Subscribed and sworn to before me, a notary public, in the county and state aforesaid, this .... day of ..... 1968.

.....
Notary Public

My commission expires .....

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, postage prepaid, by first-class mail to each arty less than 1,000 miles distant and by air mail to those parties more than 1,000 miles distant.

Dated at Washington, D. C., this 20th day of November 1968.

.....
Curtis L. Wagner, Jr.
Chief, Regulatory Law Division
Office of The Judge Advocate General
Department of the Army
Washington, D. C. 20310

APPENDIX E

Order

SERVICE DATE DECEMBER 20, 1968

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, Acting as an Appellate Division, held at its office in Washington, D.C. on the 19th day of December 1968.

No. MC-129908 TA

AMERICAN FARM LINES

(Oklahoma City, Okla.)

Upon consideration of the record in the above-entitled proceeding granting to American Farm Lines on September 3, 1968, a 90-day temporary authority to conduct motor common carrier operations and transport general commodities, including Class A and B explosives, moving on a Government bill of lading, over irregular routes, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma, and Kansas, on the one hand, and, on the other, points in Arizona, California, Nevada, Utah and Washington and (1) the entry of a temporary restraining order on October 3, 1968, by the United States District Court for the Western District of Washington in Civil Action No. 3828, *Black Ball Freight Service, et al.* v. *United States,* enjoining the order of September 3, 1968, from going into effect or otherwise becoming operative; and (2) the filing on various dates in September and October 1968, of numerous petitions of protestants for reconsideration of the said order of September 3, 1968; and replies thereto by applicant and the Department of Defense and (3) the Commission's order of November 5, 1968, reopening the proceeding for the purpose of receiving evidence from the respective parties in the form of verified statements; and

It appearing, That as a result of the said order of November 5, 1968, there were filed verified statements and a number of pleadings directed to the said order of November 5, 1968, and/or to the various verified statements, all of which are now a part of the record before us on reconsideration and have been considered, but will not be specifically described in this order.

It further appearing, That by its verified statement, filed November 20, 1968, the Department of Defense has established:

(1) That, in discharging its responsibility for the conduct of the Nation's defense, it imperatively requires service over the most direct routes in a minimum transit time to effect movement of a vast quantity of numerous commodities between innumerable points and places within the United States and abroad;

(2) That it has experienced inefficient and circuitous joint-line transportation by the use of existing carrier services which have been deficient for its needs, particularly relating to the coordination of the arrival of inbound shipments with the production schedules of manufacturing installations and the departure times and transshipment dates of matters and materials necessary to the national defense;

(3) That it has attempted but has been unable to obtain the required and necessary type of service and knows of no carrier in a position to meet its needs;

(4) That there is nothing in this record to establish that any of the protesting carriers provide a service to meet its needs;

(5) That unless applicant is granted the temporary authority sought herein, the Department of Defense will be without an expedited and flexible service for which it has an immediate and urgent need necessary to the defense of the country; and

(6) That, in balancing the scales of public interest, it is necessary to assure that the Government's immediate and urgent transportation requirement be met by an expedited and flexible service which will be used to complement rather than replace existing services.

Wherefore, and good cause appearing therefor:

It is ordered, That applicant be, and is hereby, granted temporary authority, conditioned upon full compliance with all applicable, statutory and Commission requirements concerning tariff publications, evidence of security for the protection of the public, and designation of agents upon whom process may be served, to engage in the business of transportation by motor vehicle, in interstate or foreign commerce, to the extent and in the manner set forth in the appendix hereto, subject to the further conditions that unless otherwise provided in the appendix, (1) the service herein authorized shall be limited to the movement of traffic which originates at and is destined to the points and areas specified in the appendix, and (2) no operating right separately described in the appendix may be combined with any other operating right therein described or with any other temporary or permanent authority now held by, or hereafter issued to, applicant or any other carrier.

It is further ordered, That the service provided for in this order shall not be commenced until all requirements have been met and applicant has received notice from the Commission and compliance has been effected and service may be instituted.

It is further ordered, That upon the authority herein granted becoming effective, failure of applicant to render reasonably continuous and adequate service to the public pursuant thereto and to maintain compliance with statutory and Commission requirements shall constitute sufficient grounds for suspension, change, or revocation of the said authority.

It is further ordered, That if applicant fails to comply with all applicable statutory and Commission requirements, rules, and regulations within 30 days from the date hereof, or such additional time as the Commission may specifically grant, this order shall be of no further force and effect and the said application shall be deemed to be denied for want of prosecution and applicant so notified.

And it is further ordered, That except as herein granted the said application and the pleadings referred to in the second paragraph hereof, be, and they are hereby, denied.

By the Commission, Division 1, acting as an Appellate Division.

H. NEIL GARSON
Secretary

(SEAL)

APPENDIX

No. MC 129908 TA

AMERICAN FARM LINES

OKLAHOMA CITY, OKLAHOMA

By the order of which this appendix is a part, entered under the name and number shown above, applicant upon compliance with the conditions set forth therein and after receipt of notice from the Commission that the said conditions have been met, and provided the operations are begun within the time allowed in said order or any extension thereof, is authorized to engage in the business of transportation by motor vehicle, in interstate or foreign commerce as follows:

Time for which authority is granted—180 days

Type of carrier—Common

Service authorized—

General commodities, including Classes A and B explosives, moving on Government bill of lading, over irregular routes,

Between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma and Kansas, on the one hand, and, on the other, points in Washington, California, Nevada, Utah and Arizona.

SAFETY CONDITION: This grant of authority is conditioned upon applicant's maintenance of a satisfactory degree of compliance with the Federal Highway Administration's (Department of Transportation) Motor Carrier Safety Regulations. In the event of non-compliance with these regulations, that Administration may submit a recommendation for revocation of the authority.

APPENDIX F

SERVICE DATE
November 5, 1968

Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, Acting as an Appellate Division, held at its office in Washington, D. C. on the 5th day of November, 1968.

No. MC-129908 TA

AMERICAN FARM LINES

(Oklahoma City, Okla.)

Upon consideration of the record in the above-entitled proceeding granting to American Farm Lines on September 3, 1968, a 90-day temporary authority to conduct motor

common carrier operations and transport general commodities, including Class A and B explosives, moving on a Government bill of lading, over irregular routes, between points in Kentucky, Indiana, Illinois, Missouri, Arkansas, Louisiana, Texas, Oklahoma, and Kansas, on the one hand, and, on the other, points in Washington and Arizona; and (1) the entry of a temporary restraining order on October 3, 1968, by the United States District Court for the Western District of Washington in Civil Action No. 3828, *Black Ball Freight Service, et al.* v. *United States,* enjoining the order of September 3, 1968, from going into effect or otherwise becoming operative; and (2) the filing on various dates in September and October 1968, of numerous petitions of protestants for reconsideration of the said order of September 3, 1968; and replies thereto by applicant and the Department of Defense; and

It appearing, That the Department of Defense's reply to said petitions has specified additional reasons indicating an immediate and urgent need for applicant's service which cannot be met by existing carriers;

It further appearing, That the additional evidence referred to in the previous paragraph was not a part of the original record to which protestants have had an opportunity to reply; and good cause appearing therefor:

It is ordered, That the proceeding be, and it is hereby, reopened on the Commission's own motion for the purpose of receiving a verified statement from the Department of Defense which shall, to the extent the national defense and security will permit disclosure, specify the commodities and points between which there is an immediate and urgent need for applicant's proposed service which cannot be met by existing carriers.

It is further ordered, That on or before November 20, 1968, applicant shall submit a verified statement from the Department of Defense, including therein the matter set forth in the preceding ordering paragraph.

It is further ordered, That on or before December 6, 1968, protestants may submit verified statements in response to any statement submitted by applicant;

It is further ordered, That all such verified statements submitted shall be served upon all other parties to the proceeding, and each statement shall so certify.

It is further ordered, That in view of the restraining order issued by the Court on October 3, 1968, the order of the Commission, Chairman Tierney dated, October 9, 1968, postponing the effective date of operation of the order entered herein September 3, 1968, be, and it is hereby, continued in effect and American Farm Lines be, and it is hereby, directed not to perform any for hire operations in interstate or foreign commerce pursuant to the Commission's order of September 3, 1968, until further order of the Commission.

It is further ordered, That after expiration of the time period fixed for submission of verified statements the proceeding shall be reconsidered by us on the record as made together with such verified statements as may be filed.

By the Commission, Division 1, Acting as an Appellate Division.

H. NEIL GARSON
Secretary

(SEAL)